

OPEN MEETING ITEM



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COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

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2007 DEC 21 P 2:55

DATE: DECEMBER 21, 2007

DOCKET NO: RR-03639A-07-0493

AZ CORP COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

THE UNION PACIFIC RAILROAD COMPANY
(CLOSURE OF A RAILROAD CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

DECEMBER 31, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JANUARY 15 and JANUARY 16, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

DEC 21 2007



BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 THE UNION PACIFIC RAILROAD COMPANY
10 FOR THE CLOSURE OF A RAILROAD
11 CROSSING AT LA PALMA ROAD IN THE
12 CITY OF ELOY, PINAL COUNTY, ARIZONA
13 AT AAR/DOT NO. 741 710H.

DOCKET NO. RR-03639A-07-0493

DECISION NO: _____

OPINION AND ORDER

10 DATE OF HEARING: December 17, 2007

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Mr. Terrance L. Sims, Beaugureau, Zukowski, Hancock,
14 Stoll and Schwartz, P.C., Attorney for Union Pacific
15 Railroad Company; and
16 Ms. Kenya Collins, Staff Attorney, Legal Division, on
17 behalf of the Safety Division of the Arizona Corporation
18 Commission.

17 **BY THE COMMISSION:**

18 On August 24, 2007, the Union Pacific Railroad ("Railroad") filed with the Arizona
19 Corporation Commission ("Commission") an application for approval to close an existing crossing at
20 La Palma Road in the City of Eloy ("City") in Pinal County ("County"), Arizona at AAR/DOT No.
21 741 710H ("Application").

22 On September 20, 2007, by Procedural Order, a hearing was scheduled and the Railroad was
23 ordered to notify any interested party of the Application and the hearing.

24 On October 18, 2007, the Commission's Safety Division ("Staff") filed its report
25 recommending approval of the Application.

26 On November 15, 2007, the Railroad filed certification that it had provided public notice
27 pursuant to the Commission's Procedural Order.

28 On December 17, 2007, a full public hearing was held before a duly authorized

Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Railroad and the Commission's Railroad Safety Section ("Staff") appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On August 24, 2007, the Railroad filed with the Commission a request for approval to close an existing crossing at La Palma Road in the City of Eloy in Pinal County, Arizona at AAR/DOT No. 741 710H.

2. On September 20, 2007, the Commission issued a Procedural Order which ordered that a hearing be held and ordered that the Railroad provide public notice as follows: by mailing copies of the Application and Procedural Order to affected governmental entities and any other interested parties; by publishing notice of the proceeding in a newspaper of general circulation; and by posting visible signage within 90 feet of each side of the roadway approach to the crossing notifying the public of the proposed closure and hearing thereon. In response thereto, the Commission has received no objections to the Application.

3. The Railroad filed the Application upon the request of the City and National Gypsum, Inc. ("NGI"), a company that is building a new facility on the southwest corner of the intersection where the crossing is located.

4. The hearing was held as scheduled on December 17, 2007.

5. The Application requests that the Railroad be authorized to abolish the crossing because the City and NGI have requested it. This will enable NGI to be served by the Railroad's industry track while an unnecessary public at-grade crossing can be eliminated.

6. La Palma Road is a north/south roadway that consists of two lanes of unmaintained gravel. Since 1977, the crossing has had automatic warning devices which consist of automatic

flashing lights and gates and it also has a concrete crossing surface.

7. With the elimination of the La Palma Road crossing, the public will have two alternative routes which cross the Railroad's tracks as follows: Sunshine Road, which is a paved roadway, located approximately one mile to the west; and Picacho School Road, which is also a paved roadway, approximately four miles to the east.

8. According to an engineering study performed in 2007, there is very little traffic on the road with average daily traffic of approximately 60 vehicle crossings a day. There are 48 trains a day which pass through the public crossing area at La Palma Road.

9. Staff testified that the La Palma Road crossing will be closed by the Railroad, which will remove its safety devices, block the crossing, and also remove the crossing surface. The cost of the closure will be borne by the Railroad and NGI.

10. The Railroad's Manager of Industry and Public Projects, Mr. James Smith, testified that it is the Railroad's normal policy when public at-grade crossings are closed to contribute \$10,000 to the local government. In this case, the City, as the local road authority, will receive \$10,000 after the Commission's approval of the closure.

11. The Commission's Staff received a letter from Mr. Joseph Blanton, the City's Interim Manager, in support of the Application. Staff also obtained a copy of a City Council Action Form that approved and authorized Mr. Blanton to initiate the abandonment.

12. Staff recommendeds that the Application be approved.

13. Mr. Smith anticipates that, upon Commission approval of the closure of the La Palma Road crossing, the Railroad would complete the closure in approximately 60 days.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. The closure of the crossing at La Palma Road at AAR/DOT No. 741 710H is in the public interest.

1 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
2 recommended by Staff.

3 **ORDER**

4 IT IS THEREFORE ORDERED that Union Pacific Railroad's Application is hereby
5 approved.

6 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the
7 removal of its crossing at La Palma Road in the City of Eloy in Pinal County, Arizona at AAR/DOT
8 No. 741 710H, as described in the application, by May 31, 2008.

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1 IT IS FURHTER ORDERED that the Union Pacific Railroad Company shall notify the
2 Commission, in writing, within 10 days of both the commencement and the completion of the
3 removal of the crossing.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2007.

17 DEAN S. MILLER
18 INTERIM EXECUTIVE DIRECTOR

19 DISSENT _____

20
21
22 DISSENT _____
23 MES:db

1	SRVICE LIST FOR:	UNION PACIFIC RAILROAD COMPANY
2	DOCKET NO.:	RR-03639A-07-0493
3		
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	Terrance L. Sims	
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	Railroad Engineering Coordinator	
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